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C O N F I D E N T I A L SANTO DOMINGO 000128

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E.O. 12958: DECL: 01/19/2017
TAGS: ECON PREL DR ETRD ENRG
SUBJECT: DOMINICAN COMMERCE MINISTRY INTERVENES IN
CHEVRON'S TRUCKING CONTRACTS

Classified By: EcoPol Counselor Michael Meigs, Reasons 1.4 (b) and (d)

¶1. (SBU) On January 18 the Dominican Ministry of Industry and Commerce (SEIC) published Resolution 23, not yet available on its website, which freezes current fuel transportation arrangements, further defines relevant terms, and creates a regime of stiff sanctions for failure to observe its instructions and oversight. This is a further to its Resolution 148 of December 20, a directive to consult with the Ministry and obtain permission to end contracts for fuel transport. The government intervention is an attempt to stop Chevron-Texaco's initiative to terminate its contracts with several trucking companies. Chevron's senior counsel says that resolution 148 violates articles of the CAFTA-DR regional trade agreement with the United States, which is very close to entry into force for the Dominican Republic. He has not commented on the new resolution but says that Resolution 148 violates chapter 10 (Investments) and chapter 11 (Services). On January 18, 2007, the trucking association, which is in favor of Resolution 148, carried out a 12-hour lockout, blocking entry to the Dominican refinery (Refidomsa) to every distributor's fuel trucks. The lockout ended when Secretary of Industry and Commerce (SEIC) Francisco Javier Garcia assured leaders of the trucking association that he would meet with Chevron early next week. End Summary.

Background

¶2. (SBU) Chevron-Texaco (Chevron) has developed a systematic and rigorous global process to improve efficiency of its operations. The process, known as GDTOP (Global Downstream Trucking Optimization Process), has already been deployed in most of Chevron's markets and has proven efficient and effective. The program reduces the number of third party hauling contracts in order to optimize the number of trucks needed to carry out Chevron's downstream deliveries. Trucks are used to conduct 24/7 operations instead of operating only during more traditional business hours. As the program is implemented in the Dominican Republic, the number of drivers will remain roughly the same, but the number of hauling contracts and the number of trucks used will decrease significantly.

¶3. (SBU) Both Exxon and Shell consolidated their trucking

operations in 2004 and neither company experienced any negative reaction from the Secretary of Industry and Commerce (SEIC). SEIC's Director for Hydrocarbons Rafael Lopez, commented that the firms terminated the contracts in a gradual manner.

Secretary Garcia opposes Chevron's plan

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¶4. (SBU) In the fall of 2006, Chevron officials outlined to Dominican Secretary of Industry and Commerce Javier Garcia their optimization program. At the meeting, Garcia was accompanied by the union bosses of the truckers association and the drivers union. Chevron says that Garcia took the position of the association/union opposing the optimization plan. Although Chevron outlined its plan in advance and is confident that it is complying with Dominican laws, Garcia stood firm with the association/union.

¶5. (SBU) In October 2006, Chevron terminated one of its trucking contracts, with the firm PEYSUDE. The next day, Chevron trucks were stopped by union thugs at the entrance to the single national refinery (Refidomsa) and prevented from picking up fuel. The company was unable to supply its many service stations around the country; most temporarily stopped operations. There was a coincidental fuel tanker (ship) delay at the same time that caused other downstream providers to be unable to meet demand. The combined problems resulted in a mini fuel crisis that embarrassed the SEIC.

¶6. (SBU) When the terminated company sued Chevron for contract violation, the Dominican court ruled in favor of Chevron.

¶7. (C) In early December 2006, Chevron met again with Garcia, with the association and union bosses present. Chevron officials say Garcia was adamant about reversing Chevron's decision to terminate contracts and said, "Even if the law permits you to terminate your trucking contracts with the unions, you will regret it!"

¶8. (SBU) On December 18, 2006 Chevron continued with its optimization program and delivered notices of termination of five additional contracts with the truckers association.

¶9. (SBU) On December 20, 2006, the Ministry of Industry and Commerce published its resolution 148, bearing a date of December 8, 2006. This appears to have been an attempt to finesse the 30-day termination notices Chevron delivered to certain transportation companies. The resolution stipulates that petroleum companies are required to seek the prior approval of the Secretary of Industry and Commerce if the petroleum company desires to terminate any of its transportation contracts. It also states that a petroleum company may terminate a transportation contract only in the event the transportation company breaches that contract "in a manner which affects the efficiency of the petroleum company" and after a 90-day notice and opportunity to cure the breach.

¶10. (C) Chevron's legal counsel believes that resolution 148 violates Chapter 10 (Investments) and Chapter 11 (Services) of the CAFTA-DR agreement. Emboffs spoke to the lead Dominican negotiator for investments (protect) and she indicated that she, too, thinks that Resolution 148 violates the agreement.

Meeting with SEIC about Resolution 148

¶11. (SBU) On January 5, 2007, Rafael Lopez, SEIC's director of Hydrocarbons stated to Embassy officers that Resolution 148 was passed in reaction to Chevron's decision to continue with its optimization plan. He said that the government has an obligation to ensure that there are no impediments in the

movement of petroleum products within the country.

¶12. (SBU) Lopez recalled that Chevron's decision to terminate its contract with PEYSUDE (trucking company) in October 2006 had resulted in a lockout of Chevron-Texaco's vehicles. Lopez said that Secretary Garcia wants to avert another crisis involving lockouts or truckers' strikes and believes that the termination of the contracts will cause another strike or "impediment" to the movement of fuel within the country.

¶13. (SBU) When Embassy officers asked if this resolution was a form of government intervention, Lopez rejected the idea and called it simple government oversight; "The companies may still terminate the contracts in accordance with the law, but we now would like the companies (Chevron, for instance) to discuss their plans with the Ministry of Industry and Commerce before they terminate any contracts, because we have the responsibility to ensure that the movement of fuel goes unimpeded." Lopez further stated, "We prefer to see the petroleum companies gradually terminate their contracts to avoid major shocks to the sector, similar to what Exxon and Shell did in the past." Lopez also noted that the trucking business in the Dominican Republic is a very lucrative business.

Meetings and Press

¶14. (SBU) On January 11, 2007, Chevron executives planned to meet with Garcia but Garcia postponed the meeting until January 17. This meeting was subsequently pushed back by Chevron to January 24. The majority of Chevron's contracts canceled last month will expire on January 21, thirty days after Chevron gave notice. Chevron's initiative was designed to reduce the number of contracts from 13 to 4. On January 21, Chevron will have in operation a total of 64 trucks. Of these, 47 will be operated under contracts and 17 run "in house" by non-union drivers hired directly by Chevron.

¶15. (SBU) The issue surrounding Resolution 148 reached the press more than a week ago but then quickly died down. The press initially reported that the resolution was another obstacle to the Dominican Republic's entry into force for CAFTA-DR. Garcia responded to these reports by stating that in a telephone conversation with USTR officials he explained the measure, so Resolution 148 would not block entry into CAFTA-DR.

¶16. (C) In private conversations, Garcia told USTR that Chevron is not authorized to transport fuel here, apparently attempting to use this to justify his recent actions. To this, Chevron says that the company itself does not have a license to transport fuel, but that the independent drivers it uses--including those for the in-house operations--have licenses from SEIC to transport "Chevron Texaco" fuel.

The Lockout

¶17. (SBU) On January 17th, emboffs visited Refidomsa representatives to discuss the October lockout and to gauge their expectations for the wider national transportation strike threatened for January 30. Chevron representatives said that in the event of a lockout they normally call the local law enforcement authorities and hope for a peaceful outcome. They expected a lockout of Chevron's fuelers by the truckers association on Monday (the day after contracts expire) as well as another lockout of all fuelers on January ¶30. But to the surprise of many, the truckers association began the lockout on January 18th.

¶18. (SBU) At 2:00am on January 18th, the truckers association blocked the entry of Refidomsa to all fuel trucks, regardless of ownership. Other unions joined in as a prelude to what might happen on Jan 30. The truckers

association ended the lockout at around 2:00pm after their bosses met with Garcia and received his assurance that he would meet with Chevron next week and seek a resolution satisfactory to the truckers association. The truckers association stated that if the contracts are not renewed, the lockout will be renewed and more radical steps might be taken.

¶19. (SBU) Chevron has just provided to the Embassy a .pdf copy of the Ministry's Resolution 23, so new that it is not yet available on the website www.seic.gov.do. The measure further defines terms used in the resolution and contracts and imposes a freeze on all current fuel haulage contracts (Article 8). It creates a stiff regime of sanctions for failure to observe its measures or accept its oversight. Embassy has sent the electronic copy to the Dept (WHA/CAR, WHA/EPSC) and to USTR (Malito).

¶20. (C) Comment. Garcia is adamantly opposed to Chevron's optimization program. He is in favor of the trucker's association and the driver's union for two reasons: to keep their votes and their campaign contributions and to avoid a lockout or strike that might cause another fuel shortage. Disruption of fuel supply would embarrass Garcia and President Fernandez, who is probably about to declare his intention to seek re-election. As intended by Chevron, the termination of the contracts would not hinder the movement of fuel; rather, the illegal lockouts and strikes undeterred by the police are the true impediments. Secretary Garcia has sought to link the government's responsibility of ensuring unimpeded fuel movement to the private contract arrangements existing between petroleum companies and trucking associations. Garcia's Resolution 148 represents government intervention and a dubious attitude toward the sanctity of contracts. His Resolution 23 is an intrusion in private contract arrangements, using a national security rationale. There are arguments that these measures may also be a breach of the commitments under the CAFTA-DR agreement. In comments to the press Garcia and his staff have been dismissing the idea of any linkage to CAFTA-DR, asserting that the country has already complied with all CAFTA-DR obligations and is waiting only for USTR to finish up translations and paperwork. End Comment.
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